IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9259 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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P N PATEL - Petitioner(s)

Versus

G E B & 1 - Respondent(s)

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Appearance :

MR PRADEEP PATEL for Petitioner(s) : 1,
MR RC JANI for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/11/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an

appropriate writ, direction or order directing the respondent No.1 – Gujarat Electricity Board to consider the application praying for supply of reconnection or fresh communication to the petitioner firm situated at Plot No.66 in Industrial Estate, Vallabh Vidhyanagar without insisting for the dues of the erstwhile owner.

2. One M/s Shakti Saw Mill was the owner of Plot bearing No.66 at Vithhal Udhyognagar at Vallabh Vidhyanagar. The said mill was having one electric connection of Gujarat Electricity Board. There was theft case against the said saw mill and consequently, an amount of Rs.2,32,139.19 ps was due and payable by the said mill to the Gujarat Electricity Board. It appears from the record that electricity supply was disconnected on 14.3.1989. It is the contention on behalf of the petitioner that the petitioner has purchased the said saw mill from the erstwhile owner vide sale deed for consideration of Rs.3.65 Lakhs. It is also the contention of the petitioner that when the petitioner had applied for

reconnection and / or for new electricity connection, the petitioner was directed that unless the amount of Rs.2,32,139.19 dues due to be paid by the erstwhile owner is paid by the petitioner, electricity connection will not be reconnected and / or new connection will not be given. Relying the judgment of the Hon'ble Supreme Court in case of ISHA MARBLES V. BIHAR STATE ELECTRICITY BOARD AND ANOTHER reported in 1995 (2) SCC 648 and another recent decision in case AHMEDABAD ELECTRICITY COMPANY V. GUJARAT INNS PVT. LTD, reported in 2004 (2) GLH 691, Shri Pradeep Patel, learned advocate appearing on behalf of the petitioner has submitted that the Gujarat Electricity Board cannot insist for payment of dues of the erstwhile owner and it is not the responsibility and / or liability of the petitioner – subsequent purchaser to pay the dues of the erstwhile owner. Therefore, it is requested to allow the present Special Civil Application directing the respondents either to reconnect the electricity supply and / or to grant fresh connection without insisting for payment of dues of the erstwhile owner.

3. Shri R.C.Jani, learned advocate appears on behalf of the respondent Gujarat Electricity Board. Affidavit-in-reply is also filed on behalf of the respondents. Further affidavit is also filed on behalf of the respondents in which it is submitted by the respondents that in fact, the petitioner has by communication dated 5.8.1994 agreed to pay dues of the erstwhile owner, however, requested to waive interest and delay payment charges. It is also further submitted on behalf of the respondents that in fact, in the sale deed itself one of the conditions is that any amount of theft case of the Gujarat Electricity Board which is due and payable would be paid by Pradeepkumar Narsinhbhai Patel – the petitioner herein. Therefore, it is submitted that as in the sale deed itself the aforesaid condition is there by which the petitioner is liable to pay aforesaid dues, the judgment of the Hon'ble Supreme Court in M/s ISHA MARBLES V. BIHAR STATE ELECTRICITY BOARD AND ANOTHER (Supra) is not applicable in the facts and circumstances of the case and therefore, it

is requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing on behalf of the parties.

5. It is not in dispute that the petitioner has purchased the property in question by sale deed dated 8.12.1993 and one of the conditions incorporated in the sale deed is that whatever dues towards the theft case of Gujarat Electricity Board would be paid by Pradeepkumar Narsinhbhai Patel – the petitioner herein. Not only that even by communication dated 5.8.1994 the petitioner agreed to make the payment of the amount due and payable by the erstwhile. However, the petitioner requested for waiver of interest and delay payment charges. Under the circumstances, it is now not open for the petitioner to contend that the petitioner is not liable to pay any amount of dues of the erstwhile owner. In the present case as stated above, in the sale deed there is condition by which

the petitioner has agreed to pay make payment of the dues of the erstwhile. In that view of the matter, the judgment of the Hon'ble Supreme Court in the case of M/s ISHA MARBLES V. BIHAR STATE ELECTRICITY BOARD AND ANOTHER (Supra) would not be applicable in the facts and circumstances of the case. In the case before the Hon'ble Supreme Court, there was no such condition and / or agreement by the subsequent purchaser and in that circumstances, the Hon'ble Supreme Court passed the aforesaid order. In the present case, as stated above, the facts are different and the petitioner subsequent purchaser has agreed to make payment of the dues of the erstwhile owner. Under the circumstances, the aforesaid judgment of the Hon'ble Supreme Court will not be of any assistance to the petitioner and therefore, there is no substance in the present Special Civil Application.

6. For the reasons stated above, the petition fails. The action of the respondents cannot be said to be in any way illegal and / or arbitrary which

does not call for any interference in exercise of the powers under Article 226 of the Constitution of India.

7. Rule is discharged. Interim relief, if any, granted earlier stands vacated. However, tehre will be no order as to costs.

[M.R.Shah, J.]

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